

ASSEMBLY BUDGET COMMITTEE

STATEMENT TO

ASSEMBLY COMMITTEE SUBSTITUTE FOR ASSEMBLY, No. 1999

STATE OF NEW JERSEY

DATED: JUNE 24, 2014

The Assembly Budget Committee reports favorably an Assembly Committee Substitute for Assembly Bill No. 1999.

This Assembly Committee Substitute, entitled “The Opportunity to Compete Act,” provides individuals who have a criminal record with certain protections when they seek employment.

The substitute prohibits employers from inquiring, either orally or in writing, about a candidate’s criminal record and from requiring a candidate to complete an application that makes such inquiries during the initial employment application process. “Initial employment application process” is defined in the bill as the period beginning when an applicant for employment first makes an inquiry to an employer about a prospective employment position or job vacancy or when an employer first makes any inquiry to an applicant for employment about a prospective employment position or job vacancy, and ending when an employer has conducted an interview and determined the applicant is qualified, whether in person or by any other means, and selected the applicant as the employer’s first choice to fill the position.

The substitute does not permit an employer to make oral or written inquiries concerning a candidate’s criminal record until the initial employment application process has concluded, except that the employer may make inquiries during the application process about any aspect of a candidate’s criminal record that the candidate voluntarily discloses. Employers are not precluded under the substitute from refusing to hire a candidate for employment based upon the candidate’s criminal record, provided that the refusal is consistent with the provisions of the substitute.

The substitute also prohibits an employer from knowingly or purposefully publishing an advertisement soliciting candidates for employment which states that the employer will not consider a candidate who has been arrested for or convicted of a crime or offense. The substitute’s restrictions regarding employer inquiries and advertising do not apply if: (1) the position is in law enforcement, corrections, the judiciary, homeland, security or emergency management; (2) a criminal history record background check is required for the position by law; (3) the position, by law, precludes

employment of a person with an arrest for or a conviction of a crime or offense; (4) the employer is restricted from specified business activities based on the criminal record of its employees; or (5) the employment sought or being considered is for a position designated by the employer to be part of a program or systematic effort designed predominantly or exclusively to encourage the employment of persons who have been arrested for or convicted of crimes or offenses.

An employer who violates the provisions of this substitute is liable for a civil penalty of up to \$1,000 for the first violation, \$5,000 for the second violation, and \$10,000 for each subsequent violation. The substitute does not create or establish a standard of care or duty for employers with respect to any law. Evidence that an employer has violated the bill's provisions is not admissible in any other legal proceeding. Further, the substitute does not create, establish, or authorize a private cause of action by an aggrieved person against an employer who has violated the bill's provisions.

The substitute prohibits the governing body of a county or municipality from adopting any ordinance, resolution, law, rule or regulation regarding criminal histories in the employment context, except for ordinances adopted to regulate county or municipal operations. The substitute's provisions preempt any ordinance, resolution, law, rule or regulation in effect prior to the substitute's effective date regarding criminal histories in the employment context, except for ordinances adopted to regulate county or municipal operations.

The substitute takes effect on the first day of the seventh month next following the date of enactment, but permits the Commissioner of Labor and Workforce Development to take anticipatory administrative actions.

FISCAL IMPACT:

This substitute bill was not certified as requiring a fiscal note.